IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R. RAMACHANDRAN NAIR

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

WP(C).No. 9237 of 2006(Y)

PETITIONER:

KAMALAMMA KESAVAN, W/O. LATE KUTTAPPAN KESAVAN, KATTUNKAL VEEDU, KALARCODE, SANATHANAPURAM P.O., ALAPPUZHA - 3.

BY ADV. SRI. K.K. SATHISH

RESPONDENTS:
----

1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY, GENERAL ADMINISTRATION (FFP-B) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

2. **THE DISTRICT COLLECTOR, ALAPPUZHA.**

BY GOVERNMENT PLEADER SRI. K.V. MANOJ.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 9237 of 2006(Y)

A P P E N D I X

PETITIONER'S EXHIBITS:

EXT. P1	**:**	**COPY OF THE AFFIDAVIT DULY ATTESTED BY THE SUB-DIVISIONAL MAGISTRATE, ALLEPPEY DATED 30.05.1981.**
EXT. P2	**:**	**COPY OF THE NARC ISSUED BY THE CJM COURT, ALAPPUZHA.**
EXT. P3	**:**	**COPY OF THE ENQUIRY REPORT SUBMITTED BY THE VILLAGE OFFICER, PARAVOOR TO THE 2ND RESPONDENT VIDE NO. 176/2001 DT. 13.09.2001 ALONG WITH THE STATEMENT OF SRI. H.K. CHAKRAPANI.**
EXT. P4	**:**	**COPY OF THE LETTER NO. 104383/FFP.B3/2000/ GAD DATED 16.01.2003 ISSUED BY THE 1ST RESPONDENT.**
EXT. P5	**:**	**COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER FOR THE GRANT OF KFF PENSION DATED 17.2.2004.**
EXT. P6	**:**	**COPY OF THE LETTER NO. 65825/FFP.B3/2004/ GAD DATED 14.04.2005 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.**
EXT. P7	**:**	**COPY OF THE REPRESENTATION DATED 25.02.2006 SUBMITTED BY THE PETITIONER.**
EXT. P8	**:**	**COPY OF THE PKC ISSUED BY SRI. H.K. CHAKRAPANI DATED 17.10.2005.**
EXT. P9	**:**	**COPY OF THE ORDER OF SANCTION OF SSS PENSION TO SRI. H.K. CHAKRAPANI VIDE NO. 119/PVS/104/99-FF (SZ) DATED 18.06.2003.**
EXT. P10	**:**	**COPY OF THE NARC ISSUED BY THE DISTRICT SUPDT. OF POLICE, ALAPPUZHA DATED 25.10.2005.**
EXT. P11	**:**	**COPY OF THE LETTER NO. 63819/FFP. B3/05/GAD DATED 30.10.2006 ISSUED BY THE 1ST RESPONDENT.**

// True Copy //

P.A. to Judge.

smp

T.R. RAMACHANDRAN NAIR, J.

W.P. (C). NO. 9237 OF 2006

Dated this the 2nd day of August, 2007.

J U D G M E N T

The petitioner is the widow of late Sri. Kuttappan Kesavan who was a freedom fighter, who had actively participated in the Punnapra-Vayalar Movement during the freedom struggle. The petitioner's late husband had submitted an application for grant of Kerala Freedom Fighters' Pension, which is evidenced as Exhibit P1. The application is dated 30.05.1981.

2. Exhibit P1 is the affidavit filed by the deceased husband. Exhibit P2 is the Non-availability of Records Certificate produced by the late husband at that time. Exhibit P3 is a report submitted by the Village Officer, Paravoor after conducting an enquiry into the application for pension. In Exhibit P3 it is clearly stated that the deceased husband of the petitioner had participated in the Punnapra-Vayalar struggle and an arrest warrant was issued against him in Case No. P.E. 7/1122. It is also stated that based on the warrant of arrest, he had gone underground and only after withdrawal of the same, he reappeared again. Thereafter, the petitioner was given a reply as Exhibit P4 stating that the

relevant documents in support of the Personal Knowledge Certificate in respect of Sri. H.K. Chakrapani including the order sanctioning Central Pension to him has not been produced and his application for SSS Pension is only pending therefore the application is rejected.

3. Again Exhibit P5 application was filed, to which Exhibit P6 reply was given stating that the application has been forwarded to the District Collector and the petitioner was also directed to produce copy of the arrest warrant, records from jail, court etc. The petitioner then submitted Exhibit P7 a detailed representation along with enclosures relating to Sri. H.K. Chakrapani. She has produced Personal Knowledge Certificate issued by Sri. H.K. Chakrapani along with copy of the order of sanction of Swatantratha Sainik Samman pension and jail records in respect of him as well as the Non-availability of Records Certificate issued.

4. Exhibit P8 is the Personal Knowledge Certificate issued by Sri. H.K. Chakrapani and Exhibit P9 is the proceedings showing grant of SSS pension to Sri. H.K. Chakrapani, and Exhibit P10 is the Non-availability of Records Certificate from the Superintendent of Police, Alappuzha.

5. The first respondent has filed a counter affidavit in the matter. Going by the averments in the counter affidavit, it is admitted that the application of the petitioner was recommended by the District Advisory Committee. As per the report of the Tahsildar and the recommendation of the District Advisory Committee, the application was forwarded to the Government by the District Collector with recommendation as per letter No. H4-9546/04 dated 13.07.2004. It is stated that the Government returned the application for review of the case on the basis of Circular dated 31.12.1993. It is further stated that the District Collector thereafter directed the petitioner to produce documentary evidence from official records.

6. The stand taken in the counter affidavit is that in view of the circular, unless there is production of copy of arrest warrant, jail/court records, nothing can be done as far as the application of the petitioner is concerned.

7. This is a case where the application of the petitioner was recommended by the Village Officer after it was found genuine and there is an enquiry report forwarded by Tahsildar as well as recommendation of the District Advisory Committee. The above have been forwarded by the District Collector along with

recommendation dated 13.07.2004 as revealed from the counter affidavit.

8. Then the substantial objection is the non-compliance of the terms of circular dated 31.12.1993. The question is whether when a claim of freedom fighter for pension is found genuine in the sense that his participation in the freedom struggle is not disputed at all, whether the authorities are justified in taking away the benefit simply on the basis of the stipulations of the circular dated 31.12.1993. There is no case for the respondents that based on the circular, there had been any amendment of the scheme.

9. It is well settled that the provisions of a Statute, Rules, Notifications etc. cannot be restricted based on a circular issued. The scheme does not provide for a cut off date as now fixed in the circular. Therefore, I am of the view that the reliance placed on the circular alone to reject the application of the petitioner is not correct. Since the warrant of arrest is not available, Non-availability of Records Certificate will be sufficient. This is a case where the petitioner's husband is found to be a genuine freedom fighter for his participation in the Punnapra-Vayalar struggle. Further the application for pension was initially submitted on

30.05.1981 and the stipulations if any in the Circular will not apply also.

Therefore, I am of the view that the petitioner is entitled for sanction of pension. It is declared so. There will be a direction to the respondents to sanction the pension under the Kerala Freedom Fighters' Pension Rules to the petitioner and disburse the amounts within a period of two months from the date of receipt of a copy of this judgment.

This writ petition is disposed of as above.

T.R. RAMACHANDRAN NAIR
JUDGE.

smp